**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF VIRGINIA**
**HARRISONBURG DIVISION**

| | | |
|---|---|---|
| Trex Company, Inc.<br><br>Plaintiff,<br><br>vs.<br><br>AZEK Building Products, Inc.<br><br>Defendant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Civil Action No. 5:17CV00005<br><br>VERIFIED COMPLAINT<br><br><br><br>DEMAND FOR JURY TRIAL |

Plaintiff Trex Company, Inc. ("Trex"), by and through its undersigned counsel, files this Complaint against AZEK Building Products, Inc. ("AZEK") and alleges as follows:

**SUMMARY OF THE CASE**

1. This is an action for civil remedies, including injunctive relief and damages, under the federal Lanham Act, 15 U.S.C. § 1051, *et seq*., arising out of AZEK's false and misleading statements in advertising and promoting its AZEK brand and TimberTech brand wood-alternative decking material, which directly competes with Trex's market-leading wood-alternative composite decking products.

2. Although Trex created the wood-alternative decking industry and indisputably is the best-selling decking brand in the United States and Canada, AZEK misrepresents to the purchasing public that it is "#1 in Premium Decking," "TimberTech is a preferred choice 2-to-1 over the competition," "we are the preferred premium leader in the categories where we offer products," and "TimberTech is the #1 provider in design preference" for consumers building a deck.

3. These statements, which have been widely disseminated to consumers in this District and throughout the United States through AZEK's advertising and promotional materials, the AZEK and TimberTech websites, AZEK's marketing representatives, and Internet news releases, are literally false on their face and completely baseless. Alternatively, these statements are grossly misleading and deceive customers and potential customers regarding a

purported market preference for AZEK's products and AZEK's purported status as the leader in the industry.

4. Upon information and belief, AZEK has made these statements in bad faith and with the specific intent of falsely bolstering AZEK's and TimberTech's reputation and appeal to customers at the expense of Trex's goodwill, reputation, and economic well-being.

5. AZEK's false advertising unfairly exploits the natural tendency of consumers to choose market-leading decking products whose quality and value is confirmed by consumer preferences.

6. In a wood-alternative decking industry fighting over customers newly converted from traditional wood decking and less familiar with the product offerings, these types of product preference and superiority claims carry particularly heavy weight in customer purchasing decisions and are all the more damaging when, as here, they are false.

7. AZEK's false and misleading advertising has produced and, unless enjoined by this Court, will continue to produce consumer confusion and deception, to the irreparable injury of Trex.

8. This consumer confusion and deception is only enhanced, and the harm to Trex made greater, because Trex similarly but accurately claims that it is the best-selling decking brand.

9. Trex brings this lawsuit to put an end to AZEK's false advertising campaign and to remedy the consumer confusion and deception and injuries to Trex created by AZEK's false and misleading statements.

## THE PARTIES

10. Plaintiff Trex Company, Inc. is a Delaware corporation having its principal place of business in Winchester, Virginia. Trex is North America's largest manufacturer of wood-alternative decking products, which are marketed under the brand name Trex and made in the United States. Trex has been the leading innovator in its field since 1992.

11. Defendant AZEK Building Products, Inc. is a Delaware corporation with a business address at 801 Corey Street, Scranton, Pennsylvania 18505. It manufactures AZEK

brand and TimberTech brand wood-alternative decking products, which are sold to customers in the United States and Canada, including within the Commonwealth of Virginia and this District.

## JURISDICTION AND VENUE

12. This action arises under 15 U.S.C. § 1125(a). This Court has jurisdiction over the subject matter of this Complaint pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338.

13. AZEK is subject to personal jurisdiction in this forum because it made and continues to make misrepresentations about its decking products to residents of the Commonwealth of Virginia and this District; because AZEK has caused and will continue to cause injury to Trex in the Commonwealth of Virginia and this District; because AZEK practices the unlawful conduct complained of herein, in part, within the Commonwealth of Virginia and this District; because AZEK regularly conducts or solicits business within the Commonwealth of Virginia and this District; because AZEK regularly and systematically directs electronic activity into the Commonwealth of Virginia and this District with the manifest intent of engaging in business within the Commonwealth of Virginia and this District, including the advertising and promotion of its products to Internet users within the Commonwealth of Virginia and this District; and because upon information and belief, AZEK has entered into contracts with building products suppliers in the Commonwealth of Virginia and this District for the sale of its decking products.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

## FACTS GIVING RISE TO THIS ACTION

### A. Trex's Creation of the Wood-Alternative Decking Industry

15. Before Trex came onto the scene in 1992, consumers had just one choice of material when building a deck: natural wood. While natural wood decking has aesthetic appeal, it has several significant drawbacks, including the potential for rotting, splintering, fading, and insect infestation and the need to perform extensive upkeep and maintenance.

16. Trex offered consumers an alternative. It pioneered the very first wood-alternative decking products, which are designed with the beauty of wood decking, but also with the long-term durability and easy maintenance not possible with a traditional wood deck. And

all of this is achieved in an eco-friendly manner. Trex composite decking is made almost entirely from an innovative blend of recycled wood and plastic film.

17. As might have been expected, Trex's success bred imitators and competition for customers newly converted from traditional wood decking. In the face of this competition from AZEK and others, Trex has thrived.

**B. Trex's Status As the Best-Selling Decking Brand**

18. Today, Trex is the best-selling decking brand in North America. Trex's market-leading position is no accident — it invented the industry and has been at the forefront of innovation for more than two decades.

19. Trex's status as the original wood-alternative decking brand and the most owned and sold decking in North America is a key differentiating factor between Trex and its competitors, including AZEK, and one that necessarily impacts consumer choice in favor of Trex.

20. Indeed, Trex's brand is built on its long-standing reputation, customer goodwill, and market leadership, and consumers choose Trex decking products, in part, because its market position connotes quality, consistency, value, and the peace of mind of buying products with widespread customer-acceptance.

21. This is particularly important with respect to customers who are considering switching from traditional wood decking to wood-alternative products for the first time and who may be less familiar with those product offerings. In this context, Trex's best-selling status confirms its product superiority, history of innovation, and broad-based acceptance by the purchasing public, which drives its sales over competitors, such as AZEK.

22. Trex sells its products through wholesale distributors, retail lumber dealers, and national home improvement stores.

**C. AZEK's False and Misleading Advertising of Its Wood-Alternative Decking Products**

23. AZEK manufactures and sells wood-alternative decking products to consumers in the United States and Canada under its AZEK and TimberTech brands. Its products are sold

through lumberyards and building materials distributors. AZEK is a direct competitor of Trex in the wood-alternative decking market.

24. Despite the fact that Trex indisputably is the best-selling decking brand, AZEK has engaged in a false advertising campaign that conveys the clear, unambiguous, and false message to consumers that it is the market-leader and its products are the top choice of customers. AZEK has utilized various marketing channels, including print, the Internet, and its marketing representatives, to perpetuate its unlawful advertising campaign, without any basis in fact.

25. AZEK's false and misleading statements have been willful, intentional, and deliberately made, in bad faith, with the specific intent of unfairly bolstering AZEK's and TimberTech's reputation and appeal to consumers at the expense of Trex's goodwill, reputation, and economic well-being.

26. In an attempt to avoid unnecessary litigation, Trex sent AZEK a cease and desist letter demanding that AZEK discontinue its unlawful conduct. AZEK ignored that letter and persists in its false and deceptive advertising and promotion, as further described below.

### 1. AZEK's False Statements That AZEK Is Number One in Premium Decking

27. In advertising and promoting its decking products, AZEK has falsely represented and continues to falsely represent that it is number one in premium decking.

28. For example, AZEK placed an advertisement in the January 2017 issue of the LBM Journal in which it falsely represents that AZEK is "#1 in Premium Decking." A copy of these materials is attached hereto at Exhibit A. The LBM Journal is the leading national trade magazine for the lumber and building materials distribution industry, and subscriptions are free for industry professionals. It is targeted to the very building materials suppliers that both Trex and AZEK rely on to distribute their products to consumers.

29. AZEK also falsely claims on its website (https://azek.com) that it is "Number One in Premium Decking." A screenshot of the AZEK website is attached hereto as Exhibit B.

30. On information and belief, AZEK has made the same or similar statements in

other advertising and promotional materials, communications with customers and potential customers, and elsewhere.

31. AZEK offered no support for these false statements, and on information and belief, it has nothing to substantiate that AZEK is number one in premium decking. Thus, these statements are literally false on their face.

32. Alternatively, these statements are, at a minimum, grossly misleading and deceive customers into believing that AZEK is the market-leader when Trex, in fact, has the greatest share of the wood-alternative decking market.

### 2. AZEK's False Statement That "TimberTech Is a Preferred Choice 2-to-1 Over the Competition"

33. AZEK has also made false and misleading advertising and promotional statements regarding its TimberTech decking products on its website for that brand (https://timbertech.com).

34. In the screenshot of the TimberTech website attached hereto at Exhibit C, AZEK makes several false statements that TimberTech decking products are the preferred choice over its competitors, including, as a representative example, that "Across the country, TimberTech's premium wood replacement materials are a preferred choice 2-to-1 over the competition." AZEK offers no support for these false statements, and on information and belief, it has nothing to substantiate that TimberTech is the "preferred choice 2-to-1 over the competition." Accordingly, these statements, which remain at present on the TimberTech website, are literally false on their face.

35. Alternatively, these statements are, at a minimum, grossly misleading and deceive customers into believing that TimberTech is preferred over Trex and other competitors in the wood-alternative decking market by a substantial margin when, in fact, Trex is the best-selling brand.

### 3. AZEK's False Statement That "We are the Preferred Premium Leader in the Categories Where We Offer Products"

36. Additionally, AZEK's Chief Marketing Officer, Julia Fitzgerald, falsely stated at the January 2017 International Builders' Show in Orlando, Florida, that it is the "preferred

premium leader in the categories where we offer products." AZEK then republished this false statement to the purchasing public by providing it to the website PR Newswire, where it remains publicly displayed. A copy of this news release is attached hereto at Exhibit D. AZEK offers no support for this false statement, and on information and belief, it has nothing to substantiate that AZEK is the preferred premium leader for products it offers. This statement is therefore literally false on its face.

37. Alternatively, this statement is, at a minimum, grossly misleading and deceives customers into believing that consumers prefer AZEK products, including the TimberTech brand, over Trex and other competitors. Of course, this is not true under any credible analysis of market shares and consumer preferences in the wood-alternative decking market, where Trex has long been and continues to be the best-selling brand.

#### 4. AZEK's False Statement That "TimberTech Is the #1 Provider in Design Preference"

38. Lastly, in January 2017, AZEK placed a false and misleading sponsored advertisement on Facebook in which it asserts, without any support, that "TimberTech is the #1 provider in design preference" for consumers building their dream deck. A copy of this advertisement is attached hereto as Exhibit E. On information and belief, AZEK has nothing to substantiate that TimberTech is the top choice for consumers designing their deck, and thus this statement is literally false on its face.

39. Alternatively, this statement is, at a minimum, grossly misleading and deceives customers into believing that TimberTech is preferred over all competing brands, including Trex, which is demonstrably false.

### D. AZEK's False Advertising Has the Tendency to Deceive and Actually Has Deceived Consumers and Has and Will Continue to Irreparably Harm Trex

40. The fiction created by AZEK's false and misleading statements that its products are the top choice of customers over Trex and that AZEK is the market-leader is likely to deceive and actually has deceived purchasers of wood-alternative decking products, as described above.

41. This consumer deception deprives Trex of its hard-earned public standing not

only as the pioneer of wood-alternative decking beginning in 1992, but also as the time-tested, best-selling brand over two decades later. The impact cannot be overestimated. Trex's reputation, goodwill, and status as the long-standing market-leader are core differentiators between Trex and its competition, and they are important factors in consumers choosing to purchase Trex decking instead of AZEK's or other competitors' products.

42. AZEK's false and misleading statements thus have wrongfully diverted profits from Trex, unjustly enriched AZEK, and harmed Trex's goodwill by diluting the perceived quality and value of Trex's products in the mind of customers and prospective customers. They are also damaging to the consuming public.

43. Trex has sustained and will continue to sustain irreparable damages as a result of AZEK's wrongful conduct, unless enjoined.

**CAUSE OF ACTION**

**(Violations of Lanham Act § 43(a))**

44. Trex hereby repeats and incorporates by reference each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

45. AZEK's publication of the false and misleading statements identified above constitutes false advertising in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

46. AZEK has made and distributed, in interstate commerce and in this District, literally false or misleading statements of fact in advertising and promoting its wood-alternative decking products. These advertisements contain actual misstatements and/or misleading statements as to a purported consumer preference for AZEK's wood-alternative decking products over Trex and AZEK's purported status as the market-leader.

47. These literally false and misleading statements actually deceive, or have a tendency to deceive, a substantial segment of Trex's customers and potential customers. This deception is material in that it is likely to influence the purchasing decisions of Trex's customers.

48. As a direct and proximate result of AZEK's unlawful conduct, Trex has suffered and will continue to suffer significant monetary and reputational injury.

49. In addition, as described more fully above, AZEK has caused, and will continue

to cause, immediate and irreparable injury to Trex for which there is no adequate remedy at law. As such, Trex is entitled to the preliminary and permanent injunctive relief specified below under 15 U.S.C. § 1116.

50. Pursuant to 15 U.S.C. § 1117, Trex is entitled to recover from AZEK the damages sustained by Trex as a result of AZEK's acts in violation of Section 43 of the Lanham Act.

51. Pursuant to 15 U.S.C. § 1117, Trex is also entitled to recover from AZEK the gains, profits, and advantages that it has obtained as a result of its unlawful acts.

52. Pursuant to 15 U.S.C. § 1117, Trex is further entitled to recover the costs of this action. Moreover, on information and belief, AZEK's conduct was undertaken willfully and with the intention of causing confusion, mistake, or deception, making this an exceptional case entitling Trex to recover additional damages and reasonable attorneys' fees.

## PRAYER FOR RELIEF

WHEREFORE, Trex respectfully requests that the Court enter judgment in its favor and against AZEK as follows:

A. Declaring that AZEK's conduct violates 15 U.S.C. § 1125(a);

B. Preliminarily and permanently enjoining AZEK, its agents, or anyone working for, in concert with, or on behalf of AZEK, from (i) publishing the false advertising statements identified above and/or (ii) making any other false or misleading commercial statements regarding a purported market preference for AZEK's decking products and/or AZEK's purported status as a leader in the industry;

C. Ordering AZEK to immediately remove the false advertising statements identified above from its marketing and promotional materials, the AZEK and/or TimberTech websites, Facebook, and any other locations where they have been made;

D. Ordering AZEK to correct any erroneous impression consumers may have derived concerning the relative market positions of AZEK and Trex and consumer preferences as between them, including without limitation, the placement of corrective advertising and providing written notice to the public generally and retraction letters to all known recipients of its false and misleading statements.

E. Ordering that all of AZEK's misleading and deceptive advertising and promotional materials be destroyed as allowed under 15 U.S.C. § 1118;

F. Awarding Trex damages;

G. Awarding Trex AZEK's profits obtained as a consequence of its unlawful conduct;

H. Ordering that such damages and profits be trebled and awarded to Trex as a result of AZEK's willful, intentional, and deliberate acts in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a);

I. Awarding Trex its attorneys' fees and costs incurred in bringing this action;

J. Awarding Trex prejudgment and post judgment interest; and

K. Awarding such further relief as the Court deems just and proper.

**JURY TRIAL DEMANDED**

Trex claims a trial by jury on all issues so triable in this action.

Dated: February 1, 2017

/s/ Thomas E. Ullrich

Thomas E. Ullrich
Va. Bar No. 28737
E-Mail: tullrich@wawlaw.com
Wharton, Aldhizer & Weaver, PLC
100 South Mason Street
Harrisonburg, Virginia 22801
Phone: 540.438.5322
Fax: 540.434.5502

Of counsel:

Patrick J. Perrone
E-Mail: patrick.perrone@klgates.com
Loly Garcia Tor
E-Mail: loly.tor@klgates.com
K&L GATES LLP
One Newark Center, Tenth Floor
Newark, NJ 07102-5285
Phone: 973.848.4000
Fax: 973.848.4001

Joseph J. Porcello
E-Mail: joseph.porcello@klgates.com
K&L GATES LLP
K&L Gates Center
210 Sixth Avenue
Pittsburgh, PA 15222
Phone: 412.355.6500
Fax: 412.355.6501

*To Be Admitted Pro Hac Vice*

ATTORNEYS FOR PLAINTIFF TREX
COMPANY, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

| | | |
|---|---|---|
| Trex Company, Inc. | ) | Civil Action No. |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | |
| | ) | VERIFICATION |
| AZEK Building Products, Inc. | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |

Adam D. Zambanini, being first duly sworn, deposes and says that: he is the Vice President, Marketing of Trex Company, Inc.; he has read the foregoing Verified Complaint; and he believes the facts and allegations of the Verified Complaint to be accurate based on his own personal knowledge, the inquiry of other employees, or the review of documentation.

Adam D. Zambanini
Vice President, Marketing
Trex Company, Inc.

SWORN and subscribed to before me

this 1st day of February, 2017

Notary Public for Commonwealth of Virginia

My commission expires: 6/30/2018

KRISTY D. STEELE
NOTARY PUBLIC
REG. #7267740
MY COMMISSION EXPIRES 6/30/2018
COMMONWEALTH OF VIRGINIA